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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,643	09/05/2003	Geoffrey Alan Williams	P15650	8108

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EXAMINER

GELLNER, JEFFREY L

ART UNIT PAPER NUMBER

3643

DATE MAILED: 06/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/656,643

Applicant(s)

WILLIAMES, GEOFFREY ALAN

Examiner

Jeffrey L. Gellner

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 13-16 and 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16 is/are allowed.
- 6) ☒ Claim(s) 1-6, 13-15 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Upon reconsideration of the prior art of record, finality is withdrawn. Rejections with the prior art follow. Examiner regrets any inconvenience to Applicant. The after-final amendment received 23 May 2005 has been entered.

Claim Objections

Claim 15 is objected to because of the following informality:

In claim 15, line 2, "by a said" should probably be --by said--.

Appropriate correction is required.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 3, and 4 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 7, and 8 of U.S. Patent No. 6,651,384 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are drawn to a nursery tray formed from a sheet of polymer material

Art Unit: 3643

having thicker and thinner zones, spaced apart indexing apertures in the thicker zone, and a plurality of rows of cells and stiffing ribs (portions).

Claim Rejections - 35 USC §103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5, and 19 are rejected under 35 U.S.C. §103(a) as being unpatentable over Nicholson (US 5,274,953; document F on Applicant's 1449) in view of Araki et al. (JP10-248396).

As to Claim 1, Nicholson discloses a nursery tray (Figs. 1 and 2) formed from a sheet of polymer material ("plastic seedling tray" of col. 2 lines 20-25) having spaced thicker and thinner defined zones (thicker is region around 18 in Fig. 2 and thinner is region, for example, around 12 in Fig. 2), each of the thicker zones having an upper surface (Figs. 1 and 2), the nursery tray having at least two rows of aligned, spaced apart indexing apertures (22 of Figs. 1 and 2) formed in the thicker zones of the sheet, and a plurality of rows spaced apart open top cells (11 of Figs. 1 and 2) located between the rows of indexing apertures, the cells adapted to be filled with growing medium for plants (abstract). Not disclosed is the open tops of the cells being substantially coplanar with the upper surface of the thicker zones. Araki et al., however, discloses a nursery tray with the open tops of the cells being substantially with the indexing region. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the tray of Nicholson by making the tops of the cells coplanar with the indexing region as

Art Unit: 3643

disclosed by Araki et al. so as to allow the tray to be used in alternate conveyor systems which would make the cell tops coplanar with the thicker zone.

As to Claim 5, Nicholson as modified by Araki et al. further discloses peripheral flanges (18 of Fig. 2 of Nicholson) at opposite edges, each with indexing apertures, each flange with a depending stiffening flange (region of flange 18 in Fig. 2 that is below 22 of Nicholson).

As to Claim 19, Nicholson discloses a nursery tray (Figs. 1 and 2) formed from a sheet of polymer material ("plastic seedling tray" of col. 2 lines 20-25) having spaced thicker and thinner defined zones (thicker is region around 18 in Fig. 2 and thinner is region, for example, around 12 in Fig. 2), a flange at opposite edges of the tray (implied by 18 of Fig. 1), each flange having a first section (region at leadline of 18 in Fig. 2) formed in the thicker zone and a stiffening section (region below 22 of Fig. 2) depending from the first section, a plurality of rows spaced apart open top cells (11 of Figs. 1 and 2) located between the rows of indexing apertures, the cells adapted to be filled with growing medium for plants (abstract); and, indexers (18 of Fig. 1) in the thicker zone. Not disclosed is the open tops of the cells being substantially coplanar with the upper surface of the thicker zones. Araki et al., however, discloses a nursery tray with the open tops of the cells being substantially with the indexing zones. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the tray of Nicholson by making the tops of the cells coplanar with the indexing region as disclosed by Araki et al. so as to allow the tray to be used in alternate conveyor systems which would make the cell tops coplanar with the thicker zone.

Art Unit: 3643

Claims 2 is rejected under 35 U.S.C. §103(a) as being unpatentable over Nicholson (US 5,274,953; document F on Applicant's 1449) in view of Araki et al. (JP10-248396) in further view of Boodley et al. (EP 0254434 A2).

As to claim 2, the limitations of Claim 1 are disclosed as described above. Not disclosed are a plurality of cells located outwardly of indexing apertures. Boodley et al., however, disclose apertures (capable of being indexing apertures) with a plurality of cells located outwardly of the indexing apertures (22 of Figs. 1 and 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the tray Nicholson as modified by Araki et al. by adding apertures capable of being indexing apertures as disclosed by Boodley et al. so as to increase air movement.

Claims 3, 4, 13, 14, and 15 are rejected under 35 U.S.C. §103(a) as being unpatentable over Nicholson (US 5,274,953; document F on Applicant's 1449) in view of Araki et al. (JP10-248396) in further view of Kuben (DE 4420189 C1).

As to Claim 3, the limitations of Claim 1 are disclosed as described above. Not disclosed are stiffening ribs between some of the cells, the stiffening ribs extending laterally relative to the rows of indexing apertures. Kuben, however, discloses stiffening ribs (26 of Fig. 9) between cells, the stiffening ribs extending laterally relative to the rows of indexing apertures (ribs 26 at the left and right ends on tray in Fig. 9 extend laterally). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the tray of Nicholson as modified by Araki et al. by adding stiffening ribs as disclosed by Kuben so as to direct water flow to the plants.

Art Unit: 3643

As to Claim 4, Nicholson as modified by Araki et al. and Kuben further disclose bridging material between cells (region between cells in Figs. 1 and 2 of Nicholson or between cells in Figs. 6, 9, 10 of Kuben), the stiffening ribs comprising upwardly open grooves (32 of Fig. 6 of Kuben) located the bridging material without communicating with the cells.

As to Claim 13, the limitations of Claim 1 are disclosed as described above. Nicholson as modified by Araki et al. further disclose bridging material between cells (region between cells in Figs. 1 and 2 of Nicholson). Not disclosed are stiffing ribs between some of the cells, the stiffening ribs extending laterally across the tray. Kuben, however, discloses stiffening ribs (26 of Fig. 9) between cells, the stiffening ribs extending laterally across the tray. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the tray of Nicholson as modified by Araki et al. by adding stiffening ribs as disclosed by Kuben so as to direct water flow to the plants and to have the ribs extend laterally from indexing aperture to indexing aperture so as to meet the strength needs of the tray.

As to Claim 14, Nicholson as modified by Araki et al. and Kuben further disclose open grooves (32 of Fig. 6 of Kuben) located the bridging material without communicating with the cells.

As to claim 15, Nicholson as modified by Araki et al. and Kuben further disclose laterally extending flanges formed by the thicker zone (18 of Figs. 1 and 2 of Nicholson), the indexing apertures being formed in each laterally extending flange (Figs. 1 and 2 of Nicholson).

Art Unit: 3643

Claim 6 is rejected under 35 U.S.C. §103(a) as being unpatentable over Nicholson (US 5,274,953; document F on Applicant's 1449) in view of Araki et al. (JP10-248396) in further view of Bohlmann (US 5,022,183; document D on Applicant's 1449).

As to Claim 6, the limitations of Claim 1 are disclosed as described above. Not disclosed is the cells vacuum formed in the thinner zone. Bohlmann, however, discloses a tray with cells vacuum formed (col. 2 lines 45-46) which in the sheet of Nicholson would be the thinner zone. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the tray of Nicholson by making the cells by vacuum forming so as to use an inexpensive and easily used method of production.

Allowable Subject Matter

Claim 16 is allowed over the art of record.

Response to Arguments

Applicant's arguments with respect to claims 1-6, 13-16, and 19 have been considered but are moot in view of the new ground(s) of rejection.

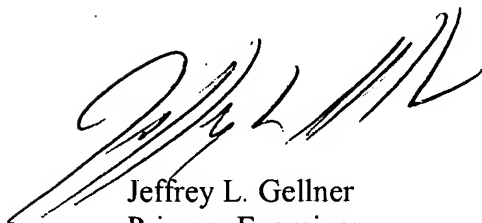
Conclusion

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 571.272.6887. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

Art Unit: 3643

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 571.272.6891. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'J. L. Gellner', is positioned above the printed name and title.

Jeffrey L. Gellner
Primary Examiner